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STATEMENT OF REASONS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

PATENT
Attorney Docket No.: 040168-000100US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 4601
Robert G. Bridges	Examiner: Tan X Dinh
Application No.: 10/777,381	Art Unit: 2627
Filed: February 11, 2004	STATEMENT OF REASONS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW
For: MIXING AND RECORDING AUDIO TRACKS FOR A PLURALITY OF DIFFERENT VERSIONS	
Customer No.: 20350	

Via EFS-Web
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Commissioner for Patents
P.O. Box 1450
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Sir:

This statement is submitted in support of the Pre-Appeal Brief Request for Review, that is submitted herewith. The applicants respectfully request review of the final rejection mailed by the U.S. Patent Office for the above-identified application on April 21, 2008 ("the Final Office Action").

A Notice of Appeal is being filed concurrently herewith.

1. Status of Claims

Claims 12-15, and 22-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 7,078,607 to Alferness (hereinafter "Alferness").

2. Reasons for Requesting Review

Claims 12-15 and 22-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Alferness. The Applicants respectfully maintain that the final Office Action, as with the previous Office Actions, does not establish a *prima facie* case of obviousness in rejecting these claims since Alferness does not teach or suggest each claimed limitation. For example, Alferness does not teach or suggest a storage medium with a number of audio tracks, each audio track having stored therein a complete version of a song and a control track comprising information for determining which version of at least one of the audio tracks is to be played.

As noted previously, Alferness is directed to "music playback software, and, more specifically, to dynamically changing music and sound compositions." (Col. 1, lines 13-15) Under Alferness, "a script tool is used to create scripts that are used to play back a song. The scripts are user definable and may, for example, define a specific order to play the components, define the components that may be played next to each other during the playback." (Col. 1, lines 60-65) However, Alferness does not teach or suggest a storage medium having audio tracks, each audio track having stored therein a complete version of a song. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. (Col. 2, lines 55-58) These elements are mixed according to the controlling script when a selected song is played back. (Col. 3, lines 34-46, col. 6, lines 13-34, col. 6, line 61 - col. 7, line 7)

That is, Alferness does not store complete songs in each of the individual tracks. Instead, Alferness stores individual sound elements in each track, e.g., a vocal track, a guitar track, a drums track, etc. See for example Alferness's definition of sound elements at col. 2, lines 55-58 and one of the advantages of the "M3" system described at col. 2, lines 52-54. Collectively, these tracks may represent a complete song. However, applying these teachings to

the pending claims misses a recitation of the pending claims. That is, the pending claims recite storing a complete version of a song in each track. Alferness on the other hand teaches storing individual sound elements of a song in each track, but not storing a complete song in each track. Furthermore, under Alferness, it is not until the tracks are played back under control of the script that these sound elements are mixed to produce the complete song. That is, Alferness does not teach or suggest storing a complete, previously mixed song in an audio track. In fact, the mixing of Alferness occurs during playback.

In response to this argument, previous Office Actions argued that it would be obvious to record the mixed songs produced by Alferness on a storage medium. The final Office Action also contends that the control script can be recorded on a medium, presumably the some one as recited in the pending claims. See Office Action page 3. It should be noted that, under Alferness and as explained above, mixing to produce a complete sound occurs during playback of the individual tracks and under the control of the control script. Therefore, the reasoning presented final and previous Office Actions must be suggesting that the individual tracks of Alferness be mixed and played back from one (first) storage medium, under control of a control script, and the resulting complete, mixed song then be recorded onto another (second) storage medium along with the control script. Even if the mixed songs produced by Alferness were to be recorded on a second storage medium as previous Office Actions suggest, Alferness does not teach or suggest also recording a control track (i.e., the control script of Alferness) on that same, second medium as the final Office Action seems to sugget. In fact, since under Alferness the purpose of the control script is to mix the individual sound components to produce the mixed song, recording the control script on a medium with the mixed songs would serve no purpose since the songs on the second medium are already mixed. That is, once the individual sound tracks from the first medium are played out and mixed under control of the control script, the purpose of the control script has been served and there would be no logical reason to then record that control script onto the second medium. Therefore, Alferness does not teach or suggest a storage medium with a number of audio tracks, each audio track having stored therein a complete version of a song and a control track comprising information for determining which version of at

least one of the audio tracks is to be played. In fact, Alferness would seem to teach away from such a medium.

Claim 12, upon which claims 13-15 and 30 depend, recites in part a "storage medium comprising: N number of audio tracks, each audio track having stored therein a complete, previously mixed song; V versions of at least one of the N audio tracks; and a control track comprising information for determining which of the V versions is to be played." Alferness does not teach or suggest, a storage medium comprising a number of audio tracks with each audio track having stored therein a complete, premixed song. Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. in each track and mixing these elements according to the controlling script when a selected song is played back. Furthermore, given the purpose of the control script of Alferness, i.e., mixing the sounds of the tracks during playback to produce the complete song, the Applicants respectfully contend that Alferness actually teaches away from a storage medium comprising a number of audio tracks with each audio track having stored therein a complete, premixed song and a control track. For at least these reasons the Applicants maintain that the rejection is improper and should be withdrawn.

Claim 22, upon which claims 23-25 depend, recites in part "recording a base version of a complete song by an artist; mixing a first version of the base version in a studio under control of the artist; mixing a second version of the base version in a studio under control of the artist; mixing a third version of the base version in a studio under control of the artist; encoding the base version on a first track of a storage medium; encoding the first version on a second track of the storage medium; encoding the second version on a third track of the storage medium; encoding the third version on a fourth track of the storage medium; and encoding a control track on the storage medium, the control track comprising information for determining which of the base version, first version, second version or third version is to be played." Alferness does not teach or suggest encoding mixed versions of a complete song on individual tracks of a storage medium. Furthermore, given the purpose of the control script of Alferness, i.e., mixing the sounds of the tracks during playback to produce the complete song, the

Applicants respectfully contend that Alferness actually teaches away from encoding mixed versions of a complete song on individual tracks of a storage medium. For at least these reasons, the Applicants maintain that the rejection is improper and should be withdrawn.

Claim 26, upon which claims 27-29 and 31 depend, recites in part "mixing a first complete version of a media work; mixing a second complete version of the media work; recording the mixed first compete version of the media work on a first track of a storage medium; recording the mixed second complete version of the media work in a second track of the storage medium; and recording a control track on the storage medium, the control track comprising information for determining which of the first complete version or second complete version of the media work is to be played." Alferness does not teach or suggest recording mixed, complete versions of a media work on individual tracks of a storage medium. Furthermore, given the purpose of the control script of Alferness, i.e., mixing the sounds of the tracks during playback to produce the complete song, the Applicants respectfully contend that Alferness actually teaches away from recording mixed, complete versions of a media work on individual tracks of a storage medium. For at least these reasons, the Applicants maintain that the rejection is improper and should be withdrawn.

Respectfully submitted,

Date: July 18, 2008

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